

Message Text

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ACTION ARA-10

INFO OCT-01 ISO-00 EB-07 COME-00 TRSE-00 OMB-01 FRB-01

XMB-04 L-03 CIAE-00 INR-07 NSAE-00 SS-15 SP-02 NSC-05

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P 162027Z JAN 76

FM AMEMBASSY BOGOTA

TO SECSTATE WASHDC PRIORITY 2879

UNCLAS BOGOTA 0526

EO 11652: NA

TAGS: EFIN, CO

SUBJ: COLOMBIANIZATION OF BANKS LAW CHALLENGED IN
COURTS

REF: BOGOTA 0481

1. A SUIT CHALLENGING THE CONSTITUTIONALITY OF THE LAW
COLOMBIANIZING FOREIGN BANKS WAS PRESENTED TO THE
SUPREME COURTS THIS WEEK. THE COURT HAS 90 WORKING
DAYS IN WHICH TO HAND DOWN ITS DECISION. THE SUIT WAS
PREPARED AND PRESENTED BY AN ATTORNEY WHO IN THE PAST
HAS REPRESENTED THE FIRST NATIONAL CITY BANK; HOWEVER,
IT IS OUR UNDERSTANDING THAT THE BANK IS NOT ASSOCIATED
WITH THE SUIT AS A PLAINTIFF.

2. ESSENTIAL ELEMENTS OF THE SUIT, ACCORDING TO PRESS
REPORTS, ARE AS FOLLOWS:

A. ARTICLE 11 OF THE CONSTITUTION WHICH, IN THE
ABSENCE OF A DECREE STATING THAT THE SITUATION (IN
THIS CASE THE PRESENCE OF FOREIGN BANKS) IS A THREAT
TO PUBLIC ORDER, GUARANTEES FOREIGNERS EQUALITY
WITH COLOMBIANS IN MATTERS OF CIVIL RIGHTS NOT
OTHERWISE RESERVED BY THE CONSTITUTION FOR COLOMBIAN
CITIZENS (SUCH AS VOTING)

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B. ARTICLE 30 OF THE CONSTITUTION WHICH GUARANTEES
ACQUIRED RIGHTS AND PERMITS EXPROPRIATION BY THE STATE
OR FORCED SALE TO THE STATE, BUT NOT FORCED SALE TO
PRIVATE PARTIES. ACQUIRED RIGHTS WOULD BE THE OPERATING
CONCESSIONS EXTENDED BY THE GOVERNMENT TO THE BANKS.

C. EXISTING TREATIES BETWEEN COLOMBIA AND THE U. S.
AND COLOMBIA AND THE U. K. WHICH GUARANTEE FOREIGN
NATIONALS DOMICILED IN COLOMBIA THE RIGHT
TO EXERCISE FREELY ANY LEGAL COMMERCIAL ACTIVITY.
THE SUIT CLAIMS THAT SINCE TREATY RIGHTS ARE NOT SPECIFICALLY
ADDRESSED BY THE LAW, THEY STILL PREVAIL. THE SUIT ALSO
CLAIMS THAT THE LAW IS UNCONSTITUTIONAL IN THAT THE CONGRESS
IS USURPING THE PREROGATIVES OF THE EXECUTIVE IN THE FIELD
OF INTERNATIONAL RELATIONS.

3. COMMENT. THE CHALLENGE IN THE COURTS IS A LOGICAL
STEP FOLLOWING PASSAGE OF THE BILL AND SIGNATURE
BY THE PRESIDENT. THE DECISION WILL BE OF INTEREST
TO ALL BANKS, INCLUDING THOSE THAT HAD AGREED TO
COLOMBIANIZE VOLUNTARILY.

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Message Attributes

Automatic Decaptioning: X
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: FOREIGN INVESTMENT, LAW, BANK NATIONALIZATION
Control Number: n/a
Copy: SINGLE
Draft Date: 16 JAN 1976
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: n/a
Disposition Approved on Date:
Disposition Authority: n/a
Disposition Case Number: n/a
Disposition Comment:
Disposition Date: 01 JAN 1960
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1976BOGOTA00526
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Film Number: D760019-0852
From: BOGOTA
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1976/newtext/t19760151/aaaabtec.tel
Line Count: 83
Locator: TEXT ON-LINE, ON MICROFILM
Office: ACTION ARA
Original Classification: UNCLASSIFIED
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 2
Previous Channel Indicators: n/a
Previous Classification: n/a
Previous Handling Restrictions: n/a
Reference: 76 BOGOTA 481
Review Action: RELEASED, APPROVED
Review Authority: greeneet
Review Comment: n/a
Review Content Flags:
Review Date: 18 JUN 2004
Review Event:
Review Exemptions: n/a
Review History: RELEASED <18 JUN 2004 by schwenja>; APPROVED <12 NOV 2004 by greeneet>
Review Markings:

Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
04 MAY 2006

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: COLOMBIANIZATION OF BANKS LAW CHALLENGED IN COURTS
TAGS: EFIN, EINV, CO
To: STATE
Type: TE
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 04 MAY 2006